



SPECIAL AND GENERAL COURTS-MARTIAL

This info paper provides basic information regarding courts-martial, specifically, special and general courts-martial. Please see our handout for summary courts-martial to learn more about that type of court. This is only very basic information and is **not a substitute for legal advice from an attorney**. If you are facing a possible court-martial, please speak with an attorney at your local TDS office to learn much more.

REPORT OF MISCONDUCT

When a service member has reportedly committed an offense, his or her commander is usually notified by military law enforcement (via daily "blotter reports" from the installation Provost Marshal), or by a report from an alleged victim or through direct observation of the alleged misconduct. After receiving notification that a service member allegedly committed an offense triable by court-martial, the commander must direct a preliminary inquiry before disposing of a case.

Commander's Inquiry. The inquiry by the command may range from an examination of the possible charges and an investigative report to a more extensive investigation depending on the offense(s) alleged and the complexity of the case. The investigation may be conducted by members of the command or, in more complex cases, military and civilian law enforcement officials. By policy, the Department of Defense and each Sister Service "requires" that allegations of sexual offenses be reported to the appropriate Military Criminal Investigative Organization (for the Army that is the Criminal Investigation Command, or CID; for Navy/Marine, NCIS; for Air Force, OSC).

Commander's Options. After the investigation is complete, the appropriate commander must make a disposition decision. By policy, the Secretary of Defense has withheld the disposition authority for all sexual offenses (Article 120 rape and sexual assault, and Article 125 forcible sodomy) to the first O-6 special court-martial convening authority in the chain of command. Commanders may make the following disposition decisions:

1. Taking no action;
2. Initiating administrative action (which can include separation ("chapter") from the Army);

3. Imposing non-judicial punishment (a form of punishment that is not considered a conviction, but can result of loss of rank, pay, and other privileges) (e.g. Article 15);
4. Preferring charges (the process of formally charging a Soldier with an offense for resolution at court-martial); or
5. Forwarding to a higher authority for preferral of charges.

PREFERRAL OF CHARGES

The first formal step in a court-martial, preferral of charges, consists of drafting a charge sheet containing the charges and specifications against a soldier, who is now called “the Accused.” A specification is a plain and concise statement of the essential facts constituting the offense charged. The Manual for Courts-Martial (MCM) contains model specifications to assist trial counsel and the chain of command in drafting the specifications. The charge sheet must be signed by the accuser under oath before a commissioned officer authorized to administer oaths. Any person subject to the UCMJ may prefer charges as the accuser.

REFERRAL OF CHARGES

After charges have been preferred, they may be referred to one of three types of courts-martial: summary, special, or general. The process of “referral” is simply the order that states that charges against an accused will be tried by a specific court-martial. The Court Martial Convening Authority, a commander, determines which level of court-martial to which the charges are to be referred. That commander must be advised by her Staff Judge Advocate or legal representative before making her determination. Usually, the seriousness of the offenses alleged determines the type of court-martial.

TYPES OF COURTS-MARTIAL

Courts-martial are not standing courts. Courts-martial are created by individual Court-Martial Convening Orders (CMCO). Without a CMCO, there is no court and thus no authorization to adjudicate any charged offense. Congress, in creating the military justice system, established three types of courts-martial: (1) summary court-martial, (2) special court-martial, and (3) general court-martial. While the Rules for Courts-Martial and the Military Rules of Evidence are applicable to all courts-martial, the jurisdiction and authorized punishments vary among the different court-martial types.

Summary Courts-Martial. The function of the summary court-martial is to “promptly adjudicate minor offenses under a simple procedure” and “thoroughly and impartially inquire into both sides of the matter” ensuring that the “interests of both the Government and the Accused are safeguarded and that justice is done.” At a summary court-martial, there is no judge and no panel (jury), and you are not entitled to in-person representation. The summary court-martial can only adjudicate minor offenses allegedly committed by enlisted service members.

Special Courts-Martial. Special courts-martial generally try offenses that are considered misdemeanors. The formality and procedural protections are much more involved in a special court-martial than a summary court-martial.

General Courts-Martial. A general court-martial is the highest trial level in military law and is usually used for the most serious offenses. These are crimes that would typically be considered felonies in a civilian jurisdiction.

MAXIMUM PUNISHMENT

The maximum punishment a special court-martial may impose is:

1. Reduction to E-1 (Officers may not be reduced);
2. Forfeiture of 2/3 pay per month for one year;
3. Confinement for 12 months (Enlisted only); and
4. A bad-conduct discharge (Enlisted only).

The maximum punishment at a general court-martial is determined by what you are found guilty of. Essentially, you add up the maximum punishments for which you are found guilty of and that is the maximum punishment that a general court-martial may impose. In general, the maximum punishment a general court martial may impose is:

1. Reduction to E-1 (Officers may not be reduced);
2. Forfeiture of all pay and allowances;
3. Confinement for the maximum authorized time by the offense(s); and
4. A dishonorable discharge. Officers may be dismissed from the service, which is equivalent to a dishonorable discharge.

The court may impose all or any combination of these punishments, or lesser forms of these punishments (e.g. a bad-conduct discharge instead of a dishonorable discharge).

COMPOSITION OF THE COURT

Special and general courts-martial are presided over by a military judge. The Military Judge fulfills many important roles, but chief among them are that he ensures the Rules for Court-Martial are followed; ensures both the Government and Defense follow the Military Rules of Evidence; rules on matters of law; and if you elect trial by military judge alone, makes findings and determines a sentence in your case.

You may be tried by military judge alone or by a panel (a jury). If you are enlisted, you are entitled to have at least 1/3 of the panel be composed of enlisted members. At least

three members must be on a panel for a special court-martial. At least five members must be on a panel for a general court-martial.

PRELIMINARY HEARING UNDER ARTICLE 32, UCMJ

The Article 32 preliminary hearing is a formal preliminary hearing conducted prior to a general court-martial only. An Article 32 preliminary hearing is not required for summary or special courts-martial. Article 32, UCMJ reads, "No charge or specification may be referred to a general court martial for trial until completion of a preliminary hearing unless such hearing is waived by the accused." The Article 32 hearing has been labeled the "military equivalent" of a civilian grand jury proceeding.

The Article 32 hearing is limited in both purpose and scope. Its statutory purposes are:

1. Determine whether there is probable cause (more likely than not) to believe an offense has been committed and whether the accused committed the offense.
2. Determine whether the convening authority has court-martial jurisdiction over the offense and the accused.
3. Consider the form of the charges.
4. Recommend the disposition that should be made of the case.

Investigation of Uncharged Offenses. A Preliminary Hearing Officer (PHO) may investigate uncharged offenses without preferral of additional charge(s), provided notice and certain rights are afforded to the accused.

Burden of Proof. The PHO determines whether "probable cause" exist to believe the accused committed the offense. "Probable cause" means "more than a bare suspicion but less than evidence that would justify a conviction."

Non-binding recommendation. The PHO's recommendations are only advisory. The convening authority may take action in accordance with the PHO's recommendation but does not have to do so.

TDS CONTACT INFORMATION

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*Torii Station: 315-763-4428		**Camp Zama: 315-738-4485	
NOTE: This handout is intended to provide basic information only. <u>Nothing in this handout should be considered legal advice.</u> Current as of 18 Aug 17.			
*TDS does not have a physical in Japan. The USAR-J Military Justice Office will arrange for you to speak with the USAG Yongsan Branch Office in Korea telephonically. Do not discuss anything about your case with any personnel in the Military Justice Office.			
**TDS does not have a physical office in Japan. The 10th RSG Military Justice Office will arrange for you to speak with the Camp Henry Branch Office in Korea telephonically. Do not discuss anything about your case with any personnel in the Military Justice Office.			
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